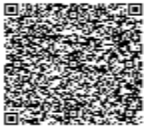


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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-48723-2019 (O&M)
Date of decision: 30.07.2024

Sombir Singh

...Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM: HON'BLE MR JUSTICE HARPREET SINGH BRAR

Present: Mr. Surender Saini, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Rajnikant Upadhyay, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J.

CRM-18018-2024

1. This application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking placing on record copy of email as Annexure R-1.
2. In view of the averments made in the application, same is allowed and copy of email is taken on record as Annexure R-1, subject to all just exceptions.

**CRM-M-48723-2019**

3. This petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.267 dated 23.07.2019 under Sections 323, 34, 354-A, 354-B, 376, 506 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Civil Lines, Sonapat and all the subsequent proceedings arising therefrom.

4. Brief facts of the case are that FIR (*supra*) was registered at the instance of respondent No.2 on the allegations that she was staying at Sonapat. The petitioner and his mother in connivance with each other called her to their house and they gave beatings and thereafter, she was sexually harassed. They kept her at their house for about one month i.e. from 25.12.2018 to 22.01.2019 and gave merciless beating and they did not take her to the doctor. The petitioner, by making her naked in front of his mother, rubbed ice on her body and forcibly gave high dose medicines without any doctor's prescription. Thereafter, she came back to her rental accommodation. The petitioner again started torturing her and asked her to leave Sonapat. She started giving tuition to the children and was also preparing for competitive exams. The petitioner had one 'katta' and under threat, he took her to Model Town, where he took a room on rent and he along with his mother gave beatings and emotionally tortured her. They did not let her to talk with anyone and took the mobile phone from her. One friend of the petitioner, namely Deepak, who is working in Vodafone

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company, was helping him to get the call details. On 18.07.2019, the petitioner tried to kill her and locked her in a room. Somehow, with the help of landlord, she escaped from there and reached at house of one Manju Sharma in Omaxe City, who supported her. Thereafter, the complainant and Manju Sharma got threat calls. On 19.07.2019 at about 10.30, the petitioner took the complainant to railway station and forced her to die. Even father of the petitioner did not support her and ignored the wrongdoings of his son and blackmailed for the sake of their social respect. With these allegations, FIR (*supra*) was registered.

5. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. In fact, the prosecutrix is a mature lady, who was earlier married to one Sonu Yadav and she got registered an FIR No.180 dated 20.06.2018 under Sections 313, 323, 34, 377, 498-A, 506 of IPC, at Police Station Civil Line Sonapat against her husband, wherein she levelled allegations of sexual assault against her husband and his family members, which is discernible from Annexure P-2. The prosecutrix also filed a complaint under the provisions of Protection of Women from Domestic Violence Act, 2005 (Annexure P-3) and later on, she effected a compromised with her husband and got the aforementioned FIR No.180 quashed. The relationship between the petitioner and respondent No.2-prosecutrix was purely consensual in nature and she accompanied the petitioner to various places, which clearly shows that no offence under

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Sections 354 or 376 of IPC has been made out. Learned counsel for the petitioner relies upon the photographs (Annexure P-4) and contends that the prosecutrix was seen roaming with the petitioner.

6. *Per contra*, learned State counsel, assisted by learned counsel for respondent No.2-prosecutrix, submits that all the pleas taken in the present petition cannot be looked into by this Court under Section 482 Cr.P.C., as it is a matter of trial.

7. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, this Court finds no force in the arguments raised by the learned counsel for the petitioner. The probable defence set up by the petitioner in the present petition cannot be appreciated in a petition under Section 482 Cr.P.C., as it is a matter of evidence. It is settled law that disputed questions of fact can only be adjudicated after the parties have duly adduced their evidence. The High Court, in exercise of its inherent powers under Section 482 Cr.P.C. is obligated to make a just and equitable choice and cannot go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence, however, convincing it might seem. Any such attempt would be impermissible in law, as it would amount to giving finality to the accusations, even before the prosecution is allowed to adduce evidence to substantiate the same.

8. A two Judge Bench of the Hon'ble Supreme Court recently examined this issue in ***Rathish Babu Unnikrishnan Vs. State (Govt. of NCT***

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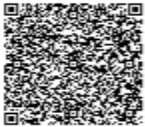
of Delhi) and another, 2022 SCC Online SC 513 and speaking through Justice Hrishikesh Roy, the following was observed:-

"17. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e, the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption."

9. A two Judge Bench of the Hon'ble Supreme Court in ***HMT Watches Ltd Vs. M.A. Abida, (2015) 11 SCC 776***, speaking through Justice Dipak Misra, has held as under:

"10..... Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties."

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10. Further, a two Judge Bench of the Hon'ble Supreme Court in ***Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458***, speaking through Justice Adarsh Kumar Goel, made the following observations:-

"17. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact."

11. Keeping in view the aforesaid facts and circumstances of the case and the ratio of law laid down by the Hon'ble Supreme Court in the cases referred to above, present petition is dismissed being devoid of merit.

12. All the pending miscellaneous application(s), if any, shall be disposed of.

13. Needless to say that nothing observed in this order shall be construed as an expression of opinion by this Court on the merits of the case, lest it may prejudice the outcome of the trial.

[HARPREET SINGH BRAR]
JUDGE

30.07.2024
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No